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IN THE

Supreme Court of the United States

October Term, 1966

No. 169

NATIONAL LABOR RELATIONS BOARD,
Petitioner-Respondent,

v.

COLUMBUS McKINNON CORPORATION,
Respondent-Petitioner.

REPLY BRIEF FOR COLUMBUS McKINNON CORPORATION

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Statement

This reply brief is submitted to direct attention to misstatements of fact contained in the brief for the National Labor Relations Board:

The petition herein for adjudication in civil contempt is based on allegations of reliance by the Company upon certain information called "task rates." The Company's answer denies these allegations under oath.

On pages 4 and 5 of its brief the Board states:

> "However, in discussing the grievance of one employee denied a merit increase petitioner *again acknowledged,* as it had in its letter (Appendix A, *infra,* p. 12), the relevance of the task rate as a reference point in merit increase claims. Specifically, petitioner

> stated that, in denying the claim for an increase, it had taken the position that the employee had performed at only 102 percent of the relevant task rate, while the employee had contended that he had performed at 122 percent of that rate (Appendix B, *infra,* p. 19)."

and

> "* * * petitioner *did not dispute* the Board's allegation that the task rates were nonetheless an element in the petitioner's merit rating system. Petitioner *explicitly conceded* that the task rate was a 'reference used in expressing' the comparison between employees (Appendix A, *infra,* p. 12), and it *admitted* that in denying a merit increase in at least one instance it referred to the employee's performance as compared with the task rate (Appendix B, *infra,* p. 19)." (Emphasis added.)

Petitioner did not "again acknowledge," fail to "dispute," "explicitly concede" or "admit" reliance on task rates to measure any employee's performance, nor did it "admit" reliance on them in opposing any grievance.

The Board attempts to spell out an admission of reliance upon the data in question by citing, out of context, portions of the Company's supporting affidavit, in the same place where that affidavit states emphatically: "* * * respondent's disposition of the grievance *was not* made in reliance upon performance in relation to task rates." (Emphasis added.)

The issue of fact, as to whether or not the Company's time study data underlying some of its task rates were relied on by the Company in measuring the productivity of employees, in awarding or withholding merit wage increases, or in opposing grievances, was decided without a trial or hearing.

The Board neither claims nor argues that a trial or hearing should be refused in a contempt proceeding when

an issue of fact exists. The Board's brief is misleading in that it argues that a trial or hearing was unnecessary because of respondent-petitioner's "admissions." The "facts" alleged and relied on by the Board have been denied under oath, not admitted. An issue of fact exists. A trial or hearing should have been directed.

Respectfully submitted,

ROBERT M. HITCHCOCK,
Counsel for Respondent-Petitioner.

Dated: August 15, 1966.